



State of Utah

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Department of Environmental Quality

Amanda Smith
Executive Director

DIVISION OF SOLID AND
HAZARDOUS WASTE
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Director

Solid and Hazardous Waste Control Board

Kevin Murray, *Chair*
Kory Coleman, *Vice-Chair*
Brian E. Brower
Scott Bruce
Jeff Coombs, MPH, LEHS
R. Ryan Dupont, Ph.D.
Larry A. Ellertson
Brett Mickelson
Brad Mertz
Gary Mossor
Dennis Riding
Dwayne Woolley
Amanda Smith
Scott T. Anderson
Executive Secretary

A regular meeting of the Utah Solid and Hazardous Waste Control Board has been scheduled for July 12, 2012 at 1:30 p.m. at the Utah Department of Environmental Quality, Multi-Agency State Office Building, Conference Room #1015, 195 North 1950 West, SLC, Utah.

(One or more Board members may participate telephonically.)

Tentative Agenda

- I. Call to Order.
- II. Approval of the Meeting Minutes for the June 14, 2012 Board Meeting..... Tab 1
(Board Action Item)
- III. Underground Storage Tanks Update..... Tab 2
- IV. Underground Storage Tanks Rules Tab 3
 - A. Approval of Proposed Changes to the Underground Storage Tank Rules R311-201-12 (UST Operator Training and Registration) and R311-206 (Underground Storage Tanks: Financial Assurance Mechanisms) for Initial Publication and 30-day Public Comment Period. (Board Action Item)
- V. Corrective Action.
 - A. Update on remediation at Ninigret Development Property, Ensign Bickford Company Properties, and Anderson Geneva Property. (Information Item Only)
- VII. Other Business.
 - A. Misc. Information Items.
 - B. The next Board meeting will be held on September 13, 2012 at 1:30 p.m. in the UDEQ Conference Room #1015. No Board meeting will be held in August 2012.

VIII. Adjourn.

In compliance with the Americans with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Brooke Baker, Office of Human Resources, at (801) 536-4412 TDD (801) 536-4414.

Utah Solid and Hazardous Waste Control Board Meeting
Utah Department of Environmental Quality
195 North 1950 West (Conference Room #1015) SLC, Utah
June 14, 2012
1:30 p.m.



Board Members Present: Kevin Murray (Chair), Brian Brower, Scott Bruce, Jeff Coombs, Ryan Dupont, Brad Mertz, Brett Mickelson, Dennis Riding and Dwayne Woolley.

Board Members Absent: Kory Coleman (Vice-Chair), Gary Mossor and Amanda Smith.

Staff Members Present: Don Verbica (Acting for Scott Anderson), Brent Everett, Gary Astin, Shane Bekkemellom, Denise Chancellor, Doug Hansen, Arlene Lovato, Terry Montgomery and Rick Page.

Others Present: Darin Buys, David Gibby, Lon Griffith and Tim Orton.

I. Call to Order.

Kevin Murray (Chair) called the meeting to order at 1:31 p.m. Larry Ellertson participated telephonically.

II. Approval of Meeting Minutes for the May 10, 2012 Board Meeting (Board Action Item).

It was moved by Dwayne Woolley and seconded by Brad Mertz and UNANIMOUSLY CARRIED to approve the May 10, 2012 Board meeting minutes.

III. Board Duties and The Open Meetings and Ethic Acts, Denise Chancellor, Attorney General's Office.

Denise Chancellor, Attorney General's Office, gave a presentation on the Board duties. (A copy of the PowerPoint presentation is available with the meeting minutes.)

Ms. Chancellor explained that the structure of the Boards in the Department of Environmental Quality has changed since Senate Bill 21 became effective on May 8, 2012. The Executive Secretary position is almost obsolete as it only provides administrative support to the Boards, such as creating/setting up the agendas, etc. Under the new statute, the Executive Secretary's previous authorities, powers, and/or duties are now transferred to division directors.

The Executive Director is a non-voting member of each the DEQ Boards but would vote in case of a tie. The Executive Director may appoint a designee. The Executive Director has statutory emergency powers and makes all final adjudicatory decisions. The Board will no longer hear or make final decisions on administrative law judges' recommended decisions or orders. The Executive Director appoints all administrative law judges to hear DEQ adjudicative matters.

Ms. Chancellor discussed the criteria for Board membership and reviewed the Solid and Hazardous Waste programs over which the Board has jurisdiction. The SHW Board will transition to a nine-

member board on March 1, 2013. The first board to transition to a nine-member Board was the Radiation Control Board.

Ms. Chancellor reviewed Board actions and powers, including things that the Board may not do, such as issuing, amending or terminating a permit, license, or certification. The division director's powers and duties, board policy functions, legislative functions and rulemaking were also reviewed.

Ms. Chancellor also reviewed the requirements of the Open and Public Meeting Act, conflicts of interest issues, the Ethics Act and its prohibitions and how to identify and handle conflicts.

Dwayne Woolley requested clarification regarding "Ownership" as addressed in the Ethics Act. Information provided indicated that if an individual represents a company but does not have ownership, there is no need to disclose a possible conflict. Mr. Woolley felt it may pose a conflict. Ms. Chancellor stated it is best to read both the literal language of the statute and the intent of the statute and if there is any doubt, it is better to disclose the information and submit it to her.

Brent Everett announced that, effective July 1, 2012, Ms. Chancellor will be retiring from the Attorney General's Office after 24 years of service to the State of Utah. Mr. Everett wanted to recognize Ms. Chancellor and thank her for all her many years of dedicated service to DEQ. Mr. Everett extended an invitation to all Board members to attend Ms. Chancellor's retirement party on June 21, 2012, from 2 p.m. to 4 p.m. in the UDEQ, Board Conference Room #1015.

IV. Underground Storage Tanks Update.

Brent Everett updated the Board members on the following two items:

- The cash balance of the Petroleum Storage Tank (PST) Trust Fund at the end of April 2012 was \$11,611,361.00. In comparison, the preliminary numbers show that the cash balance at the end of May 2012 was \$11,831,830.00. The Division of Environmental Response and Remediation (Division) will continue to watch the cash balance of the Fund closely, particularly since the coverage limit of petroleum releases covered under the PST Trust Fund was increased from \$990,000.00 to \$1,990,000.00 by the Legislature in 2010 through the passage of House Bill 120.
- The Division's deadline for compliance with the owner/operator training requirement for Class A and B operators for facilities located throughout the State was January 1, 2012. However, the Federal deadline for compliance for this requirement is August 8, 2012. Due to the hard work of the Underground Storage Tank (UST) Compliance staff, 1,333 out of 1,365 facilities have received this required owner/operator training, which equates to a 97.7% compliance rate. In order to bring the remaining 2.3% into compliance, the Division has sent out approximately 27 notices of intent to revoke Certificates of Compliance, which will help them come into compliance prior to the Federal deadline.

Ryan Dupont inquired if there was a particular reason for the 27 remaining facilities not complying with this training requirement. Mr. Everett stated that there has been an extensive public relations campaign to inform facilities of this requirement and that there are a variety of reasons or specific circumstances for them not complying.

V. Proposed Changes to Underground Storage Tank Rules R311-201 (Certification Programs and UST Operator Training) and R311-206 (Underground Storage Tanks: Financial Assurance Mechanisms) (Informational Item).

Gary Astin, Environmental Scientist for the UST Compliance Section of the Division, informed the Board members that the 2012 Utah Legislature made changes to the Utah UST Act, providing for a “red-tag” program to replace the current “green-tag” program for identifying compliance status of USTs. Other changes were made to remove wording that was out of date. The Division proposes changes to the UST rules in order to implement the statutory changes and make other changes that were determined to be appropriate based on the latest 5-year review of the rules. The rules have specific time periods or fiscal years that have now passed. The proposed changes remove these references and provide new, more general wording. In these cases, the proposed changes do not implement anything new or make new requirements. They merely remove the out-of-date references and provide appropriate wording for the requirements currently in place. Other changes are proposed to fine-tune the UST operator training rules and provide for specific situations that have arisen regarding operator training, and to modify the requirements for tanks that leave the PST Trust Fund and demonstrate financial responsibility by other methods. The proposed changes include the following:

- R311-201-12, UST Operator Training and Registration. Adds wording to allow an UST operator to be a registered Class A or Class B operator. Allows an UST owner/operator to designate a third-party Class B operator as a Class A operator when the tanks are properly, temporarily closed and the UST owner is an entity that has ownership of an UST facility only to protect a security interest in the property. Removes references to the UST compliance “green-tag” regarding B operator monthly inspections and retraining.
- R311-206-4, Requirements for Environmental Assurance Program Participants. Removes wording that refers to the documentation of non-marketer status for assessment of PST Fund fees for fiscal years 1991 through 1994. The UST Act subsection to which this rule refers was removed by the Legislature.
- R311-206-5, Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods. Removes a reference to submittal of financial assurance documents for fiscal year 1998 and inserts general wording to provide for document submittal each year.
- R311-206-8. Retitled to Restriction on Delivery of Petroleum. Implements change made by the Legislature to provide for placement of a delivery prohibition tag on tanks that are not in-compliance and on new tanks as they are installed. The proposed change will provide for the tags to be placed on tanks whose Certificate of Compliance has been revoked or lapsed due to non-payment of fees. The tag will also be placed on tanks that do not have proper spill or overfill prevention devices, or proper equipment for the chosen leak detection and corrosion protection methods. New tanks will have a tag in place during installation to prevent delivery of fuel before the Certificate of Compliance is issued. Includes wording to allow for the Division Director to authorize deliveries of fuel for new tanks for ballasting and required tightness testing. Provides for penalties for deliveries of fuel to a tank that is tagged, and fees for unauthorized removal of the delivery prohibition tag.

- R311-206-9, Removing Participating Tanks from the Environmental Assurance Program. Reduces the advance notice requirement for review of a new financial responsibility method for tanks going off the PST Fund to 30 days from 60 days. Provides for notification in writing from the UST owner or operator of the intent to leave the Fund. Allows the Division Director to approve tanks to leave the Fund in less than 30 days if the UST owner already has a current alternate financial responsibility method in place, and allows for tanks to leave the Fund after the designated 30-day period if the UST owner has not properly documented financial responsibility in the 30-day period.
- R311-206-10, Participation in the Environmental Assurance Program After a Period of Voluntary Non-Participation. Removes reference to a one-year time period in which UST owner/operators could return to the PST Fund without doing a site assessment, and refers only to the current requirements for returning to the Fund.

It is anticipated that the Division will bring these proposed rules back before the Board in the next meeting in order to seek approval for initial publication and to begin a 30-day public comment period in order to begin the rule making process.

Mr. Dupont asked how a facility would receive a Certificate of Compliance when a compliance issue is present, such as inadequate spill prevention or corrosion protection, and a delivery prohibition tag on the tank does not compromise the facility's Certificate of Compliance. Mr. Astin explained that if a compliance issue arises at a facility, the Division would "red-tag" the facility, which would prohibit the facility from receiving fuel, but would not revoke the Certificate of Compliance until the facility went through the entire compliance process. If the facility never had a Certificate of Compliance, the Division would not issue one until the facility was in compliance.

Dennis Riding inquired how the Division envisions this "red-tagging" of tanks will be implemented when in the past, if a compliance issue were found during an inspection, the Division would allow facilities the opportunity to make repairs. Mr. Astin stated that if a compliance issue were found, the Division would give the facility a reasonable amount of time to correct the issue before "red-tagging" the tank. Doug Hansen, UST Compliance Section Manager, also added that if the compliance issue could be resolved fairly quickly and not likely to do harm in the meantime, the Division would be willing to work with the owner to establish a reasonable time frame in order for the facility to install the required equipment.

Mr. Riding also asked if the 27 facilities that have not met the owner/operator training requirement were owned by financial institutions. Mr. Astin indicated that although some of the facilities are owned by financial institutions, most of facilities out of compliance with the owner/operator training requirement are not owned by financial institutions.

Mr. Riding continued by asking if the proposed rule changes will affect the monthly checklist that is written into rule and currently being used by owner/operators to scrutinize their facilities. Mr. Astin explained that the checklist is incorporated by reference in the rule, but since the Division is considering making other changes to the checklist, the Division has decided to do this separately from the proposed rule changes. If the rules were to be approved by the Board in a future meeting, the checklist would remain the same until the Division changes it in the future, which would require further rule changes.

Mr. Riding concluded by inquiring how the Division envisions regulating the one-time drop of fuel for the testing of tanks at new facilities when they will be “red-tagged.” Mr. Astin stated that the Division anticipates a “red-tag” that will not physically lock out access to the fill pipe of the tank. The one-time drop will be handled in the same manner as before when the Division authorizes the drop through a letter, which would then be faxed to the owner/operator, the facility, and to the installation company. Mr. Riding suggested that it might be advantageous for the Division to have a place where the “red-tag” can be punched in order to know that a one-time drop has occurred.

Brad Mertz asked if a fuel supplier makes a delivery to a tank that has been “red-tagged,” is there a penalty for the fuel supplier or is the owner/operator just penalized. Mr. Astin explained that if a fuel supplier makes a delivery to a “red-tagged” tank, both the fuel supplier and the owner/operator would be penalized with a \$500.00 fine.

Mr. Riding reiterated his concern about there being something physical on a tank that is “red-tagged,” but is eligible to receive a one-time drop in order to test the tank. Mr. Mertz concurred that there should be something physically on the tank in order for a fuel supplier to know that the tank is authorized to receive a one-time drop. In response to this concern, Mr. Hansen stated that although there are logistical challenges in implementing this suggestion, the Division will discuss the issue further with the Utah UST Advisory Task Force in order to determine general stakeholder interest and consider a practical means of implementation.

VI. Underground Storage Tank Operator Training Implementation Presentation.

Utilizing a PowerPoint presentation, Mr. Hansen provided the Board members with an overview and update on the UST Owner/Operator Training requirement for the State of Utah, which was implemented as part of the Federal Energy Policy Act of 2005. (A copy of this presentation is available with the meeting minutes.) This overview included the background of the training, the stakeholder’s involvement in its development, and the registration requirements for an owner/operator to become certified. The overview also included the various types of training classes available, the evaluation and assessment of the test associated with the training classes, and the next steps the Division will take in endeavoring to reach 100% compliance with this Federal mandate.

Dwayne Woolley questioned if there is any type of refresher or additional training for certified individuals to take if any changes were to be made to the Owner/Operator Training Program. Mr. Hansen explained that the Division has an extensive process in place to provide outreach to the UST community when changes to the program occur. In response, Mr. Woolley suggested that there be some mechanism available for the Division to guarantee that owner/operators have reviewed any new information in order to stay current with their certification. Mr. Hansen replied that the Division will discuss this issue with the Utah UST Advisory Task Force in order to review this matter further.

IV. Other Business.

- A. Misc. Information Items – None to report.**
- B. Upcoming Board meeting.**

The next Board meeting will be held on July 12, 2012 at 1:30 p.m. in the UDEQ Conference Room #1015.

V. Adjourn.

The meeting adjourned at 2:39 p.m.

UST STATISTICAL SUMMARY
June 1, 2011 -- May 31, 2012

PROGRAM													
	June	July	August	September	October	November	December	January	February	March	April	May	(+/-) OR Total
Regulated Tanks	3,860	3,859	3,854	3,858	3,846	3,838	3,833	3,821	3,818	3,805	3,804	3,790	(70)
Tanks with Certificate of Compliance	3,756	3,759	3,756	3,734	3,725	3,732	3,737	3,735	3,733	3,720	3,719	3,706	(50)
Tanks without COC	104	100	98	124	121	106	96	86	85	85	85	84	(20)
Cumulative Facilitlies with Registered A Operators	111	122	215	302	567	670	1,030	1,179	1,237	1,260	1,304	1,333	94.47%
Cumulative Facilitlies with Registered B Operators	96	112	210	304	540	654	1,004	1,171	1,233	1,262	1,307	1,333	94.47%
New LUST Sites	10	5	11	7	12	5	6	5	5	4	8	10	88
Closed LUST Sites	11	6	6	6	4	5	7	13	4	9	5	10	86
Cumulative Closed LUST Sites	4419	4427	4434	4441	4446	4441	4463	4478	4480	4489	4493	4507	88
FINANCIAL													
	June	July	August	September	October	November	December	January	February	March	April	May	(+/-)
Tanks on PST Fund	2,879	2,882	2,879	2,856	2,847	2,844	2,848	2,851	2,846	2,832	2,825	2,806	(73)
PST Claims (Cumulative)	584	586	590	592	592	592	593	594	595	596	596	596	12
Equity Balance	-\$20,983,748	-\$21,325,521	-\$21,357,451	-\$20,889,850	-\$20,871,987	-\$20,320,148	-\$20,868,030	-\$20,560,415	-\$20,751,647	-\$20,936,825	-\$20,805,386	-\$21,143,324	(\$159,576)
Cash Balance	\$11,647,127	\$11,305,353	\$11,755,372	\$11,526,897	\$11,544,760	\$12,096,600	\$11,548,717	\$11,856,333	\$11,665,100	\$11,479,923	\$11,611,361	\$11,831,830	\$184,703
Loans	0	0	1	0	0	0	0	1	0	0	1	1	1
Cumulative Loans	87	87	88	88	88	88	88	89	89	89	90	91	4
Cumulative Amount	\$2,303,864	\$2,303,864	\$2,408,804	\$2,408,804	\$2,408,804	\$2,408,804	\$2,408,804	\$2,558,804	\$2,558,804	\$2,558,804	\$2,708,804	\$2,729,287	\$425,423
Defaults/Amount	0	0	0	0	0	0	0	0	0	0	0	0	0
	June	July	August	September	October	November	December	January	February	March	April	May	TOTAL
Speed Memos	60	42	21	20	34	30	14	106	68	24	48	35	502
Compliance Letters	29	23	24	9	7	5	5	7	4	124	5	7	249
Notice of Intent to Revoke	0	0	0	0	1	0	0	0	0	0	0	2	3
Orders	0	0	0	0	0	1	0	0	0	1	0	31	33

Utah Solid and Hazardous Waste Control Board Action Item

Proposed changes to R311, Underground Storage Tank Rules, for initial publication and public comment

The Division of Environmental Response and Remediation (DERR) requests that the Utah Solid and Hazardous Waste Control Board approve proposed amendments to the Utah Underground Storage Tank (UST) rules for initial publication and public comment.

Background:

The 2012 Utah legislature made changes to the Utah UST Act, providing for a "red tag" program to replace the current "green tag" for identifying compliance status of USTs. Other changes were made to remove wording that was out of date. The DERR proposes changes to the UST rules to implement the statutory changes and make other changes that were determined to be appropriate based on the latest 5-year review of the rules. The rules currently have some references to specific time periods or fiscal years that have now passed. The proposed changes remove these references and provide new, more general wording. In these cases, the proposed changes do not implement anything new or make new requirements. They merely remove the out-of-date references and provide appropriate wording for the requirements currently in place. Other changes are proposed to fine-tune the UST operator training rules and provide for specific situations that have arisen regarding operator training, and to modify the requirements for tanks that leave the Petroleum Storage Tank (PST) Fund and demonstrate financial responsibility by other methods.

The proposed changes were presented to the Board as an information item during the June 2012 Board meeting. The Division also requested informal comments from stakeholders (UST owners and operators, certified individuals, and other interested persons) during June 2012, and presented the proposed changes to the UST advisory task force during its meeting on June 27, 2012. Changes have been made to the proposed "red tag" rules to specifically include tanks that never have qualified for a certificate of compliance and to refer correctly to the authority for issuing tags to tanks that lack certain required equipment.

A brief summary of the proposed changes appears below, and the text of the changes is attached. Rule wording to be added is underlined, and wording to be removed is ~~struck out~~. The attached document also contains *italicized* explanations of each proposed change. The *italicized* wording is **not** part of the rule text.

Summary of proposed changes:

R311-201-12, UST Operator Training and Registration. Adds wording to allow an UST operator to be a registered Class A or Class B operator. Allows an UST owner/operator to designate a third-party Class B operator as a Class A operator when the tanks are properly temporarily closed and the UST owner is an entity that has ownership of an UST facility only to protect a security interest in the property. Removes references to the UST compliance "green tag" regarding B operator monthly inspections and re-training.

R311-206-4, Requirements for Environmental Assurance Program participants. Removes wording that refers to the documentation of non-marketer status for assessment of PST Fund fees for fiscal years 1991 through 1994. The UST Act subsection to which this rule refers was removed by the legislature.

R311-206-5, Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods. Removes a reference to submittal of financial assurance documents for fiscal year 1998 and inserts general wording to provide for document submittal each year.

R311-206-8. Re-titled to Delivery Prohibition. Implements a change made by the legislature to provide for placement of a "delivery prohibition" tag on tanks that are not in compliance and on new tanks as they are installed. The proposed change will provide for the tags to be placed on tanks whose certificate of compliance has been revoked for non-compliance or has lapsed due to non-payment of fees, and on tanks that have never qualified for a certificate of compliance (previously-existing "non-notifier" tanks). The tag will also be placed on tanks that do not have required spill or overfill prevention devices, or required equipment for leak detection and corrosion protection. New tanks will have a tag in place during installation to prevent delivery of fuel before the certificate of compliance is issued. Includes wording to allow for the Division Director to authorize deliveries of fuel for new tanks for ballasting and required tightness testing. Provides for penalties for deliveries of fuel to a tank that is tagged, and fees for unauthorized removal of the delivery prohibition tag.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program. Reduces the advance notice requirement for review of a new financial responsibility method for tanks going off the PST Fund to 30 days from 60 days. Provides for notification in writing from the UST owner or operator of the intent to leave the Fund. Allows the Division Director to approve tanks to leave the Fund in less than 30 days if the UST owner already has a current alternate financial responsibility method in place, and allows for tanks to leave the Fund after the designated 30-day period if the UST owner has not properly documented financial responsibility in the 30-day period.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation. Removes reference to a one-year time period in which UST owner/operators could return to the PST Fund without doing a site assessment, and refers only to the current requirements for returning to the Fund.

Governor's Executive Order

On December 6, 2011, Governor Herbert signed an executive order establishing effective oversight over state agency rulemaking. This executive order requires agencies, when proposing rule changes, to include as part of the rule analysis anticipated costs or savings in terms of fiscal and non-fiscal impacts and burden a rule may have, directly or indirectly. This analysis shall be reviewed with a board or commission with rule-making authority prior to submitting the rule filing. Copies of the rule analysis forms for R311-201-12 and R311-206 are attached, giving the Division's analysis of anticipated fiscal and non-fiscal impacts of the proposed changes. In summary, the Division considers the impacts of the proposed changes not to be significant, and to result in simplification and lessening of burdens placed on the regulated community.

Action Item:

The Division of Environmental Response and Remediation requests that the Utah Solid and Hazardous Waste Control Board approve the proposed changes to R311-201-12 and R311-206 for initial publication and public comment as amended rules. The proposed adoption schedule is:

Board approval for publication and public comment: July 12, 2012

Publication in the Utah State Bulletin: August 1, 2012

Public comment period: August 1, 2012 to August 31, 2012

Public hearing: August 16, 2012

Board approval for final adoption: September 13, 2012

Final effective date of new rules: September 14, 2012

Utah Underground Storage Tank Rules- Proposed Amendments Draft 06/27/12

Rule wording to be added is underlined; wording to be removed is ~~struck out~~. Explanations of the proposed changes are shown in *italics*. The explanations are **NOT** part of the rule text.

Please note:

1) *The 2012 Utah legislature changed the Utah Underground Storage Tank Act to give enforcement authority to the director of the Division of Environmental Response and Remediation instead of the Executive Secretary (UST) of the Utah Solid and Hazardous Waste Control Board. The Utah UST rules will be amended to reflect this change by replacing "Executive Secretary" with "Director". Until this is done, copies of the current proposed changes will continue to use the term "Executive Secretary".*

2) *Proposed changes to rule R311-201 involve only R311-201-12, the rules for operator training and registration. The remainder of R311-201 is not included in this document.*

R311-201-12. UST Operator Training and Registration.

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall, by January 1, 2012, have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Executive Secretary to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) After January 1, 2012, new Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner, operator, ~~or~~ employee, or individual designated under Subsection R311-201-12(d)(2). The Class A operator ~~who~~ has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system.

(1) The Class A operator shall:

~~(1)A~~ have a general knowledge of UST systems;

~~(2)B~~ ensure that UST records are properly maintained according to 40 CFR 280;

~~(3)C~~ ensure that yearly UST fees are paid;

~~(4)D~~ ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

~~(5)E~~ make financial responsibility documents available to the Executive Secretary as required; and

~~(6)F~~ ensure that Class B and Class C operators are trained and registered.

Allows an UST operator to be the Class A operator. Under the current rule, the Class A operator must be the UST owner or an employee of the owner, but in some cases the UST owner is the property owner or someone else who does not operate the tank. A lessee or other individual is the tank operator and has general oversight for the UST system, including payment of fees and providing financial responsibility. Allowing the UST operator to be the Class A operator allows the individual who has the actual responsibility for the tank to be designated as the Class A operator.

(2) An owner or operator may designate a third-party Class B operator as a Class A operator if:

(A) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to protect a security interest in that property and has not operated the USTs at the facility;

(B) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and

(C) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

Allows for an UST owner to designate a third-party Class B operator as a Class A operator under a certain scenario: when the UST owner/operator becomes responsible for the USTs only to protect a security interest in

Utah Underground Storage Tank Rules- Proposed Amendments Draft 06/27/12

Rule wording to be added is underlined; wording to be removed is ~~struck-out~~. Explanations of the proposed changes are shown in *italics*. The explanations are **NOT** part of the rule text.

the property and has not operated the USTs, and if the tanks are properly temporarily closed and emptied. In these situations, the UST owner is a financial institution or property owner who has become the de facto UST owner through foreclosure, default of the tenant, etc., and has no intention or desire to operate the tanks. Under the current rule, that owner/operator is required to provide A and B operators for the facility, and periodic operator inspections are required under R311-201-12(h)(5). Under the proposed rule, the owner/operator could contract with a third-party class B operator to perform the inspections, and could designate the B operator as an A operator also, to avoid the cost of A operator training and registration for the owner.

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator shall:

- (1) ensure that on-site UST operator inspections are conducted according to the requirements of Subsection R311-201-12(h);
- (2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;
- (3) ensure that the status of the UST system is monitored every seven days for alarms and unusual operating conditions that may indicate a release;
- (4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;
- (5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;
- (6) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;
- (7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;
- (8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and
- (9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

Allows an UST operator to be a Class B operator. Under the current rule, the Class B operator must be the UST owner, an employee of the owner, or a third-party Class B operator, but in some cases the UST owner is the property owner or someone else who does not operate the tank. A lessee or other individual is the tank operator and has day-to-day responsibility for the UST system, including documenting proper leak detection and prevention. Allowing the UST operator to be the Class B operator allows the individual who has the actual responsibility for the tank to be designated as the Class B operator.

(f) After January 1, 2012, any individual providing services as a third-party Class B operator shall be trained and registered in accordance with Subsection R311-201-12(j) and shall:

- (1) be a current certified UST installer as either a general installer or service/repair technician, or
- (2) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of \$250,000 minimum per occurrence.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

- (1) be present at the facility at all times during normal operating hours;
- (2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;
- (3) properly respond to alarms, spills, and overfills;
- (4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and
- (5) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(h) UST Operator Inspections.

(1) Each UST facility shall have an on-site operator inspection conducted every 30 days, or as approved under Subsection R311-201-12(h)(4) or (5). The inspection shall be performed by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Executive Secretary.

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- (2) The UST operator inspection shall document that:
 - (A) release detection systems are properly operating and maintained;
 - (B) spill, overfill, vapor recovery, and corrosion protection systems are in place and operational;
 - (C) tank top manways, tank and dispenser sumps, secondary containment sumps, and under-dispenser containment are intact, and are properly maintained to be free of water, product, and debris;
 - (D) ~~[the tag or other identifying method issued under Subsection 19-6-411(7) is properly in place on each tank;~~
 - ~~(E)~~ alarm conditions that could indicate a release are properly investigated and corrected, and are reported as suspected releases according to 40 CFR 280.50 or documented to show that no release has occurred; and
 - ~~(F)~~(E) unusual operating conditions and other indications of a release or suspected release indicated in 40 CFR 280.50 are properly reported.

Removes the requirement that the monthly UST operator inspection include documentation that the UST compliance tag is in place on each tank. The 2012 Utah legislature removed the requirement that all compliant petroleum USTs display a tag showing that they are eligible to receive fuel. Under the statutory change, only tanks that are not eligible to receive fuel will be tagged.

(3) The individual conducting the inspection shall use the form "UST Operator Inspection- Utah" to conduct on-site operator inspections. The form, dated April 30, 2009, and including information required to be completed during the inspection, is hereby incorporated by reference.

(4) The Executive Secretary may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.

(5) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an operator inspection every 90 days.

(i) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device, if the facility dispenses fuel.

(j) Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Executive Secretary, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overfill prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Executive Secretary. The Executive Secretary shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(j)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Executive Secretary, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Executive Secretary. The Executive Secretary shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

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(A) Applicants for Class A and B operator registration shall submit a registration application to the Executive Secretary, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or expire if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

- (i) submitting a completed application form;
- (ii) paying any applicable fees; and
- (iii) documenting successful completion of any re-training required by Subsection R311-201-12(k).

(B) If the Executive Secretary determines that the operator meets all the requirements for registration, the Executive Secretary shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(j)(1) before receiving the renewal registration.

(k) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

- (A) lapsing of certificate of compliance;
- (B) failure to provide acceptable financial responsibility; or
- (C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Subsection R311-201-12(h); or

(C) ~~[failure to have the tag or other identifying method issued under Subsection 19-6-411(7) properly in place on each tank; or~~

~~—(D)—[failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.~~

Removes the requirement for re-training of the Class B operator if the tank compliance tag is not in place on the UST. The 2012 Utah legislature removed the requirement that all compliant petroleum USTs display a tag showing that they are eligible to receive fuel. Under the statutory change, only tanks that are not eligible to receive fuel will be tagged.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Executive Secretary.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Executive Secretary within 30 days of the re-training. If the documentation is not received, the Executive Secretary may revoke the certificate of compliance for the facility for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(5) If the documentation of re-training is not received by the Executive Secretary within six months of the

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date of determination of non-compliance, the Class A or B operator's registration [~~will~~shall] lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(j)(1) and (2).

(6) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(k)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(k)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(l) Reciprocity.

(1) If the Executive Secretary determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(j)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(j)(2)(D).

KEY: hazardous substances, administrative proceedings, underground storage tanks, revocation procedures

Date of Enactment or Last Substantive Amendment: January 13, 2012

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503

R311. Environmental Quality, Environmental Response and Remediation.

R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.

R311-206-1. Definitions.

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks shall:

(1) meet all requirements for participation in the Environmental Assurance Program, or

(2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) Owners or operators shall declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of Subsection 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Executive Secretary determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(a) The Executive Secretary shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(1) the owner or operator has a certificate of registration;

(2) the tank is substantially in compliance with all state and federal statutes, rules and regulations;

(3) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(4) the owner or operator has submitted a letter to the Executive Secretary stating that based on customary business inventory practices standards there has been no release from the tank;

(5) the owner or operator has submitted a completed application according to a form provided and approved by the Executive Secretary, and has declared the financial assurance mechanism that will be used;

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(6) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees; and

(7) the owner or operator has submitted an as-built drawing that meets the requirements of R311-200-1(b)(3).

R311-206-4. Requirements for Environmental Assurance Program [p]Participants.

(a) ~~[To meet the requirements of Subsections 19-6-411(1)(a)(ii) and 19-6-411(1)(b)(ii) the owner or operator shall submit:~~

~~_____ (1) A letter to the Executive Secretary stating that the facility is not engaged in petroleum production, refining, or marketing, and~~

~~_____ (2) Evidence, each fiscal year, of average annual throughput less than 10,000 gallons per month based on current inventory records.~~

~~_____ (b)]~~In accordance with Subsection 19-6-411(1)(~~[e]~~a), the annual facility throughput rate, if reported, shall be reported to the Executive Secretary as a specific number of gallons, based on the throughput for the previous calendar year.

~~[e]~~b) In accordance with Subsection 19-6-411(1)(~~[d]~~b), when a petroleum storage tank is initially registered with the Executive Secretary, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

Subsection (a) is removed because the 2012 Utah legislature removed the subsection in the Utah UST Act to which it refers. Documentation of non-marketer status for PST Fund fees for fiscal years 1991 to 1994 is no longer required due to the statutory change. Other references to the statute are changed because the legislative change altered the numbering of the subsections to which the rule refers.

~~[d]~~c) In accordance with Subsection 19-6-411(6), the Executive Secretary may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

~~[e]~~d) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

~~[f]~~e) Auditing of UST facility throughput records for fiscal year 1998.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility for the months of July 1997 through June 1998. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The executive secretary may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Executive Secretary.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Executive Secretary.

(D) All costs of an independent audit shall be paid by the owner or operator.

~~[g]~~f) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of \$10,000 upon request and to the satisfaction of the Executive Secretary. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the administrative cost is covered by the PST fund fee. However, the Executive Secretary may require the owner or operator to submit an independent audit to demonstrate net worth for self insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set

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forth in Subsection R311-206-4(~~[f]~~e)(2).

Citation is changed because the subsection to which it refers has been re-numbered.

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Executive Secretary the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Executive Secretary is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2)(a) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent yearly review of a financial assurance document shall be due on July 1 annually.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.107. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the Executive Secretary, and an additional processing fee shall be paid in circumstances as determined by the Executive Secretary.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Executive Secretary each year as follows:

(1) ~~[For State fiscal year 1998 evidence of financial assurance for all mechanisms shall be due to the Executive Secretary by June 15, 1997.~~

~~_____ (2) Thereafter, proof of financial assurance shall be reported to the Executive Secretary and shall include:~~

~~_____ (A)]~~ Owners and operators using the financial test of self insurance shall submit the "Letter from Chief Financial Officer" to the Executive Secretary within the maximum 120 day period specified in 40 CFR 280.95.

~~(B)~~2 Owners and Operators using insurance and risk retention group coverage for financial assurance shall submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Executive Secretary within 30 days of acceptance of such policy by the insurer or risk retention group.

~~(f)~~A If the insurance policy or risk retention group coverage is cancelled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Executive Secretary as well as the insured.

~~(h)~~B The insurer shall have a rating of A- or greater by A.M.Best Co.

~~(E)~~3 Owners and operators using an irrevocable letter of credit shall submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Executive Secretary within 30 days of issuance from the issuing institution.

~~(D)~~4 Owners and operators using a fully funded trust fund for financial assurance shall submit proof of the trust fund and formal certification of acknowledgement to the Executive Secretary within 30 days after implementation of the trust fund.

~~(E)~~5 Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period

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specified in 40 CFR 280.95.

~~(F)~~6 Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance.

~~(G)~~7 Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

~~(H)~~8 Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Executive Secretary within 120 days of the end of the owner/operator's or guarantor's fiscal year.

Reference to submittal of financial responsibility documents for fiscal year 1998 is removed. Former wording regarding submittal of documents for subsequent years after fiscal year 1998 is replaced with general wording to specify that financial responsibility documents shall be submitted each year.

(d) The Executive Secretary may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Executive Secretary within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Executive Secretary may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Executive Secretary.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Executive Secretary shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Executive Secretary.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

- (1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);
- (2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and
- (3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

- (1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);
- (2) meeting applicable requirements of the Utah State Fire Code adopted pursuant to Section 53-7-106;
- (3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and
- (4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

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R311-206-7. Revocation and Lapsing of Certificates.

(a) The Executive Secretary shall revoke a certificate of compliance or registration if he determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412(2), Subsection 19-6-428(3), and Section R311-206-3.

(c) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(f) In accordance with Section 19-6-414, the Executive Secretary may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

R311-206-8. ~~[Proof of Certification]~~Delivery Prohibition.

(a) ~~[In accordance with Subsection 19-6-411(7), a tag or other means of identification shall be issued to each petroleum storage tank or underground storage tank which has demonstrated current compliance with Section 19-6-412 and Section R311-206-3 or Section R311-206-6. The tag or other means of identification shall be displayed for view of the person delivering or placing petroleum product into an underground storage tank for which the tag was issued.~~

~~(b) A tank shall not be issued a tag or other means of identification if the owner or operator has not satisfied the requirements of Section 19-6-412. An owner or operator shall not allow a tag to be displayed on a tank for which the Certificate of Compliance has been revoked or has lapsed, or on a tank for which the eligibility to receive payment for claims against the fund has lapsed unless the owner or operator has demonstrated compliance with financial assurance requirements.]~~In accordance with Subsection 19-6-411(7), the Director shall authorize the placement of a delivery prohibition tag identifying a tank:

(1) for which the certificate of compliance has been revoked in accordance with Section 19-6-414, or

(2) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5), or

(3) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(a)(4), or

(4) that is a new installation, and has not been issued a certificate of compliance.

(b) In accordance with Subsection 19-6-403(1)(b)(i), the Director shall authorize the placement of a delivery prohibition tag to be placed on the tank as soon as practicable after the determination is made that a tank:

(1) does not have spill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or

(2) does not have overfill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21 (d), or

(3) does not have equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D, or

(4) does not have equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(c) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(d) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under R311-206-8(e).

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- (e) The Director may issue written approval for a delivery of petroleum to:
 - (1) provide ballast for a new tank during installation, or
 - (2) allow for the tank tightness test required under Section 19-6-413.
- (f) The delivery prohibition tag shall remain in place until the Director issues:
 - (1) for tanks that have a tag in place in accordance with Subsection R311-206-8(a):
 - (A) a new certificate of compliance for the tank, and
 - (B) written authorization to remove the delivery prohibition tag, or
 - (2) for tanks that have a tag in place in accordance with Subsection R311-206-8(b):
 - (A) written authorization to remove the delivery prohibition tag.
- (f) If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(f)(1)(B) or Subsection R311-206-8(f)(2)(A), the UST owner or operator shall be subject to:
 - (1) a re-inspection and any applicable fees, and
 - (2) placement of a new delivery prohibition tag on the tank.

*This section is revised to implement a change to the Utah UST Act made by the 2012 Utah legislature. The statutory change removed the requirement that underground petroleum tanks have a tag or other means of identification to show which tanks are eligible to receive deliveries of regulated substances. Under the statutory change, only tanks that are **not** eligible to receive deliveries will be tagged. The proposed rule change provides for a "delivery prohibition" tag to be placed on tanks whose certificate of compliance has been revoked for non-compliance or has lapsed due to non-payment of fees, and on tanks that have never qualified for a certificate of compliance (previously-existing "non-notifier" tanks). The tag will also be placed on tanks that do not have a spill prevention device, an overfill prevention device, or the required equipment necessary for leak detection or corrosion protection, as required by the UST regulations (40 CFR 280). When this occurs, the tag will be placed to prohibit deliveries, but the certificate of compliance will remain in place. This follows requirements for delivery prohibition in the 2005 Energy Policy Act and delivery prohibition guidelines issued by EPA. A delivery prohibition tag will also be placed on newly-installed tanks that have not yet received a certificate of compliance. This tag will be placed on the new tank during the installation process, then will be removed when the certificate of compliance is issued. The rule change also allows the division director to authorize deliveries of fuel for ballasting of tanks at installation, and for the tightness testing that must be done before a certificate of compliance can be issued. This puts into rule the "one-time drop" concept that has been the method under which the Executive Secretary has authorized deliveries required for these purposes. The proposed rule specifies that if a delivery prohibition tag is removed without authorization from the division director, the UST owner/operator is subject to re-inspection and the re-inspection fees that are specified in the division fee schedule, and a new delivery prohibition tag will be placed on the tank to replace the one removed without authorization.*

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

- (a) ~~[At any time after May 1, 1997, o]~~ Owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:
 - (1) permanently closing tanks as outlined in 40 CFR 280, subpart G, Rule R311-204, and Rule R311-205, or
 - (2) meeting the following requirements:
 - ~~(i)~~ A demonstrating compliance with Section R311-206-5, and
 - ~~(ii)~~ B notifying the Executive Secretary in writing at least 6~~30~~ days before the date of cessation of participation in the program, and specifying the date of cessation.
- (i) The Director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under R311-206-5 for other USTs owned or operated by the owner or operator.
- (ii) The date of cessation of participation in the program may occur after the date designated in Subsection R311-206-9(a)(2)(B) if the owner or operator does not document compliance with R311-206-5 by the date originally designated.
- (b) The fund will not give pro-rata refunds.
- (c) For tanks being removed voluntarily from the program, the date of cessation of participation in the

Utah Underground Storage Tank Rules- Proposed Amendments Draft 06/27/12

Rule wording to be added is underlined; wording to be removed is ~~struck out~~. Explanations of the proposed changes are shown in *italics*. The explanations are **NOT** part of the rule text.

program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

Changes the requirement for advance notice to the Director when an owner/operator intends to cease participating in the Environmental Assurance program and the Petroleum Storage Tank Fund. The time period is changed from 60 days to 30 days. If an owner/operator wants to cease participating in the fund, the process for reviewing the alternate financial responsibility mechanism generally can be accomplished in less than 60 days. Requires that the notification from the owner/operator of the intent to leave the Fund be in writing. The proposed change also allows for situations in which the review cannot be completed in 30 days by allowing the date to leave the Fund to be moved to a date later than the one originally designated. Allows for the director to approve tanks to go off the Fund in less than 30 days if the owner/operator has other tanks that are already off the Fund and the owner/operator has properly documented financial responsibility for the current year. Example- if the owner/operator purchases a new facility that was on the Fund under its previous owner.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.

(a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:

- (1) notify the Executive Secretary of the intent to participate in the program;
- (2) comply with the requirements of Subsection 19-6-428(3), and
- (3) meet the requirements of Subsection R311-206-3(a) to qualify for a new certificate of compliance.

(b) ~~[Effective January 1, 2007, and until December 31, 2007]~~In accordance with Subsection 19-6-428(3)(b), the Executive Secretary may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:

(1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.

(2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;

(ii) the most recent simulated leak test for all automatic line leak detectors;

(iii) cathodic protection tests, if applicable, and

(iv) internal lining inspections, if applicable.

~~[(c) Effective January 1, 2008, the Executive Secretary may determine that reasonable cause exists if:~~

~~———(1) the owner or operator meets the requirements of Subsections (b)(1) and (b)(2) above, and]~~

~~[(2)]3~~ ~~[(t)]~~The period of non-participation in the Program is less than six months, or the UST is less than ten years old.

Removes a reference to a one-year time period originally in place as an incentive for UST owner/operators to return to the PST Fund without performing a site assessment. The Utah legislature provided for this opportunity to return to the PST Fund (19-6-428(3)(b)) and the rule originally provided separate requirements for the one-year window (2007) and afterwards. Since 2007 has now passed, references to the 2007 window are removed and general wording is added to state the requirements that have been in place since Jan. 1, 2008.

KEY: hazardous substances, petroleum, underground storage tanks

Date of Enactment or Last Substantive Amendment: February 14, 2011

Utah Underground Storage Tank Rules- Proposed Amendments Draft 06/27/12

Rule wording to be added is underlined; wording to be removed is ~~struck out~~. Explanations of the proposed changes are shown in *italics*. The explanations are **NOT** part of the rule text.

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-428

NOTICE OF PROPOSED RULE AMENDMENT

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Rule Information

DAR file no: _____ Date filed: _____
 State Admin Rule Filing Key: 152833
 Utah Admin. Code ref. (R no.): R311-201-12

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Environmental Response and Remediation

Room no.: First Floor

Building:

Street address 1: 195 N 1950 W

Street address 2:

City, state, zip: SALT LAKE CITY UT 84116-3085

Mailing address 1: PO BOX 144840

Mailing address 2:

City, state, zip: SALT LAKE CITY UT 84114-4840

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Gary Astin	801-536-4103	801-359-8853	gastin@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 UST Operator Training and Registration

Notice Type

3. Type of notice: Amendment

Rule Purpose

4. Purpose of the rule or reason for the change:

Subsections (d) and (e)- The rule as currently written allows an underground storage tank (UST) owner or employee to become a Class A or Class B operator, but does not provide for an UST operator to be a Class A or Class B operator. In some cases, the UST owner is the property owner or someone else who does not operate the USTs. A lessee or other individual is the UST operator and has day-to-day oversight for the USTs. The proposed change allows the operator, the person who in these cases has the actual responsibility for the USTs, to be the Class A or Class B operator. The change to allow an UST owner or operator to designate a third-party Class B operator as a Class A operator is proposed for situations in which a financial institution or other person becomes the UST owner through foreclosure, default of a tenant, etc., and does not operate the USTs. Under this proposed change, the UST owner will not be required to become a Class A and/or Class B operator, but will be able to contract with a qualified individual to be both the Class A and Class B operators, saving the cost and effort to become a registered operator in a situation where the UST owner may not have practical knowledge to oversee the USTs properly. Subsections (h) and (k)- The 2012 Utah legislature amended the Utah UST Act to remove the requirement that USTs display a tag or other means of identification to show that they are eligible to receive deliveries of fuel or other petroleum products, and provide for a "red tag" to be displayed only on USTs that are not eligible to receive deliveries. The proposed rule changes remove references to the compliance tag regarding monthly UST operator inspections and mandatory Class B operator retraining, because of the legislative change that does away with the compliance tag concept.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.

☒ No ☐ Yes

Rule Summary

6. Summary of the rule or change:

Subsections (d) and (e)- Adds wording to allow an UST operator to be registered as a Class A or Class B operator. Adds wording to allow an UST owner/operator to designate a third-party Class B operator as a Class A operator when the UST owner/operator is a financial institution or other person who acquired ownership of the UST facility only to protect a security interest in the property, and when the USTs are properly temporarily closed and emptied. Subsections (h) and (k)- Removes wording that requires the Class B operator to verify, as part of the monthly UST operator inspection, that the UST compliance tags are in place on each tank. Removes wording that provides for automatic re-training of the Class B operator if the UST compliance tags are not in place on each tank.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: ☒ No ☐ Yes

No anticipated costs or savings. The changes expand the range of individuals who may become Class A or Class B operators to meet requirements already in place, and remove requirements that no longer apply due to legislative changes made to the UST Act.

B) Local government:

Affected: ☒ No ☐ Yes

No anticipated costs or savings for local government. The changes expand the range of individuals who may become Class A or Class B operators to meet requirements already in place, and remove requirements that no longer apply due to legislative changes made to the UST Act.

C) Small businesses:

Affected: ☐ No ☒ Yes

("small business" means a business employing fewer than 50 persons)

No costs are anticipated. The proposed changes allow individuals to become Class A or Class B operators in certain situations, expanding the range of individuals who may become registered operators, to meet requirements that are already in place. An UST owner or operator who is a small business may realize savings of approximately \$250 (the cost of training and registration as a Class A or Class B operator) in situations where a third-party class B operator may be designated as the Class A operator. The aggregate savings would depend on the number of UST owner/operators who take advantage of this option. Removing references to the UST compliance tag has no cost or savings; the changes are made only to remove requirements that no longer apply due to legislative changes made to the UST Act.

D) Persons other than small businesses, businesses, or local government entities:

Affected: ☐ No ☒ Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

No costs are anticipated. The proposed changes allow individuals to become Class A or Class B operators in certain situations, expanding the range of individuals who may become registered operators, to meet requirements that are already in place. An UST owner or operator may realize savings of approximately \$250 (the cost of training and registration as a Class A or Class B operator) in situations where a third-party class B operator may be designated as the Class A operator. The aggregate savings would depend on the number of UST owner/operators who take advantage of this option. Removing references to the UST compliance tag has no cost or savings; the changes are made only to remove requirements that no longer apply due to legislative changes made to the UST Act. Non-fiscal impacts: The proposed changes make it easier for UST owner/operators to meet the operator training requirements already in place by expanding the range of individuals who may become Class A and Class B operators. This allows, in some situations, for individuals who have greater expertise and day-to-day oversight for UST systems to become registered operators, instead of requiring that individuals who have little or no hands-on knowledge of UST systems be the Class A and Class B operators. The other proposed changes only remove requirements that no longer apply due to legislative changes made to the UST Act.

Compliance Cost Information

8. Compliance costs for affected persons:

No costs are associated with the proposed changes. The changes expand the range of individuals who may become Class A or Class B operators to meet requirements already in place, and remove requirements that no longer apply due to legislative changes made to the UST Act.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

The changes make it easier for UST owners and operators to provide a Class A operator in a case where the owner acquires the property by foreclosure or other default, and saves the cost of becoming a Class A operator. The other changes do not have any significant fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Amanda Smith, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

19-1-301, 19-6-105, 19-6-402, 19-6-403

63G-4-102

63G-4-201 through 205

63G-4-503

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page)

Publisher

Date Issued

Issue, or version

ISBN Number

ISSN Number

Cost of Incorporated Reference

Adds, updates, removes-- SELECT ONE --

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) :

08/31/2012

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm
AM/PM):

At (place):

08/16/2012

01:30 PM

Department of Environmental
Quality, 195 North 1950
West, Room 1015, Salt Lake
City, Utah

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy):

09/14/2012

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
hazardous substances, administrative proceedings, revocation procedures, underground storage tanks

File Information

15. Attach an RTF document containing the text of this rule change (filename):

No document is associated with this filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and Brent Everett
title: Director

Date (mm/dd/yyyy): 07/02/2012

NOTICE OF PROPOSED RULE AMENDMENT

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Rule Information

DAR file no: _____ Date filed: _____
 State Admin Rule Filing Key: 152836
 Utah Admin. Code ref. (R no.): R311-206

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Environmental Response and Remediation

Room no.: First Floor

Building:

Street address 1: 195 N 1950 W

Street address 2:

City, state, zip: SALT LAKE CITY UT 84116-3085

Mailing address 1: PO BOX 144840

Mailing address 2:

City, state, zip: SALT LAKE CITY UT 84114-4840

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Gary Astin	801-536-4103	801-359-8853	gastin@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 Underground Storage Tanks: Financial Assurance Mechanisms.

Notice Type

3. Type of notice: Amendment

Rule Purpose

4. Purpose of the rule or reason for the change:

Section 4- Wording is removed because the 2012 Utah legislature removed the subsection in the Utah Underground Storage Tank (UST) Act to which it refers. Documentation of non-marketer status for state fiscal years 1991 through 1994 is no longer required due to the statutory change. Other references to the statute are changed because the legislative change altered the numbering of the subsections to which the rule refers. Section 5- Reference to submittal of financial assurance documents for fiscal year 1998 is removed because 1998 has passed and it is more appropriate to refer generally to the requirements that have been in place since the end of fiscal year 1998. Section 8- This section is revised to implement a change to the Utah UST Act made by the 2012 Utah legislature. The statutory change removed the requirement that underground petroleum tanks have a tag or other means of identification to show which tanks are eligible to receive deliveries of regulated substances, and provides for tagging only of tanks that are not eligible to receive deliveries. Section 9- The current rule provides that an UST owner must give 60 days advance notice when the owner decides to remove a tank from coverage under the Petroleum Storage Tank (PST) Fund, and use an alternate financial assurance mechanism for the tank. The proposed change reduces this time period to 30 days, because the review of the new financial assurance mechanism generally can be done in less than 60 days. Other changes are proposed to simplify the process and allow for situations in which the owner/operator already has an alternate mechanism in place, or when the alternate mechanism review cannot be completed in 30 days. Section 10- The current rule provides separate requirements for tanks that return to PST fund participation without a site assessment during calendar year 2007, and those that return to Fund participation after 2007. The reference to 2007 is removed because that year has passed, and those requirements no longer apply.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.

☒ No ☐ Yes

Rule Summary

6. Summary of the rule or change:

Section 4- Removes wording that refers to the documentation of non-marketer status for assessment of PST Fund fees for state fiscal years 1991 through 1994. Changes one citation because the subsection to which it refers will be re-numbered. Section 5- Removes a reference to submittal of financial assurance documents for fiscal year 1998 and replaces it with general wording for subsequent years. Section 8- Section is re-named. Removes wording applying to tags placed on petroleum USTs to show that they are eligible to receive deliveries of regulated substances, and adds wording to implement changes made to the Utah UST Act by the 2012 Utah legislature. The legislative change provides for placement of tags on tanks that are not eligible to receive fuel, rather than on those that are eligible to receive fuel. Provides for a "delivery prohibition" tag to be placed on an UST whose certificate of compliance has been revoked for non-compliance or has lapsed for non-payment of fees, and on an UST that has never qualified for a certificate of compliance. The tag will also be placed on an UST that does not have required equipment in place for spill prevention, overfill prevention, leak detection, or corrosion protection. Provides for a tag to be placed on a new UST when it is installed, to ensure that no deliveries are made to the UST, unless authorized by the Division Director, until the initial certificate of compliance is issued. Provides for authorization for deliveries of fuel for tank ballasting and/or testing before the certificate of compliance is issued. Provides for penalties for deliveries of fuel to a tank that is tagged, and fees for the unauthorized removal of the delivery prohibition tag. Section 9- Allows a tank to cease participation in the PST

Fund in 30 days, rather than the current 60 days, after the owner/operator notifies the Division Director of the intent to leave the Fund. Provides for notification in writing from the UST owner or operator of the intent to leave the Fund. Allows the Division Director to approve tanks to leave the Fund in less than 30 days if the UST owner already has a current alternate financial responsibility method in place, and allows for tanks to leave the Fund after the designated 30-day period if the UST owner/operator does not properly document alternate financial responsibility within the 30-day period. Section 10- Removes reference to a one-year time period (calendar year 2007) in which UST owner/operators could return to the PST Fund without doing a site assessment, and refers only to the current requirements for returning to the Fund, that have been in place since January 1, 2008.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: ☐ No ☒ Yes

The proposed change will save the state budget the yearly cost of producing tags for all tanks, approximately \$2,000 per year. The cost of the delivery prohibition tags will be much lower each year, because fewer tags will be needed, but there may be the increased cost of using state employees to place the tags on non-compliant tanks. Approximate cost of the delivery prohibition tags is \$300 per year.

B) Local government:

Affected: ☐ No ☒ Yes

The changes regarding USTs that leave the PST Fund (section 9) will allow a local government that is an UST owner/operator to begin receiving refunds of the 1/2 cent per gallon environmental surcharge sooner because the tank can potentially leave the Fund in 30 days rather than 60, or less than 30 days if the UST owner/operator already has an alternate financial assurance mechanism in place for other tanks. The amount saved will depend on the number of tanks that leave the fund and the throughput of those tanks. The other changes (sections 4, 5, and 10) have no costs or savings because they only modify rule wording that no longer applies due to statutory changes or the passing of a specific time period.

C) Small businesses:

Affected: ☐ No ☒ Yes

("small business" means a business employing fewer than 50 persons)

The changes regarding USTs that leave the PST Fund (section 9) will allow a small business that is an UST owner/operator to begin receiving refunds of the 1/2 cent per gallon environmental surcharge sooner because the tank can potentially leave the Fund in 30 days rather than 60, or less than 30 days if the UST owner/operator already has an alternate financial assurance mechanism in place for other tanks. The amount saved will depend on the number of tanks that leave the fund and the throughput of those tanks. The other changes (sections 4, 5, and 10) have no costs or savings because they only modify rule wording that no longer applies due to statutory changes or the passing of a specific time period.

D) Persons other than small businesses, businesses, or local government entities:

Affected: ☐ No ☒ Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

The changes regarding USTs that leave the PST Fund (section 9) will allow the UST owner/operator to begin receiving refunds of the 1/2 cent per gallon environmental surcharge sooner because the tank can potentially leave the Fund in 30 days rather than 60, or less than 30 days if the UST owner/operator already has an alternate financial assurance mechanism in place for other tanks. The amount saved will depend on the number of tanks that leave the fund and the throughput of those tanks. The other changes (sections 4, 5, and 10) have no costs or savings because they only modify rule wording that no longer applies due to statutory changes or the passing of a specific time period.

Non-fiscal impacts: The change that no longer requires each tank to have a compliance tag will save UST owner/operators the time and effort to place tags on their tanks each year and ensure that they remain in place. The other changes will have no material impact because they only remove wording that no longer applies, and provide for no new requirements.

Compliance Cost Information

8. Compliance costs for affected persons:

There are no anticipated compliance costs. The changes implement a statutory change that will remove the requirement that each UST have a compliance tag, provide for an expedited process for tanks to cease participating in the PST Fund, and remove rule wording that no longer applies.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

The reduction of the time period for review of alternate financial responsibility mechanisms will allow UST owners and operators to remove themselves from PST Fund coverage sooner after they notify the DERR and permit them to receive refunds of their environmental surcharge. The other changes should not have any material fiscal impact on businesses.

B) Name and title of department head commenting on the fiscal impacts:

Amanda Smith, Executive Director

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :

19-6-428, 19-6-105, 19-6-403

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page)

Publisher

Date Issued

Issue, or version

ISBN Number

ISSN Number

Cost of Incorporated Reference

Adds, updates, removes-- SELECT ONE --

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) :

08/31/2012

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm
AM/PM):

At (place):

08/16/2012

01:30 PM

Department of Environmental
Quality, 195 North 1950
West, Room 1015, Salt Lake
City, Utah

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy):

09/14/2012

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
hazardous substances, underground storage tanks, petroleum

File Information

15. Attach an RTF document containing the text of this rule change (filename):

No document is associated with this filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and Brent Everett
title: Director

Date (mm/dd/yyyy): 07/02/2012